

AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 120

Introduced by Assembly Member Hayashi

January 15, 2009

An act to amend Sections ~~2234, 2761, and 3541~~ of, and to add Section ~~686~~ 809, 809.2, and 809.3 of, and to add Sections 809.04, 809.07, and 809.08 to, the Business and Professions Code, and to amend Section ~~123462~~ of the Health and Safety Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 120, as amended, Hayashi. ~~Health care providers: reasonable disclosure: reproductive choices. Healing arts: peer review.~~

Existing law provides for the professional review of specified healing arts licentiates through a peer review process conducted by peer review bodies, as defined.

This bill would encourage a peer review body of a health care facility to obtain external peer review, as defined, for the evaluation or investigation of an applicant, privilege holder, or member of the medical staff of the facility in specified circumstances.

This bill would require a peer review body to respond to the request of another peer review body and produce the records requested concerning a licentiate under review. The bill would specify that the records produced pursuant to this provision are not subject to discovery, a subpoena, or a subpoena duces tecum, and are not admissible as evidence in a civil action.

Existing law requires the governing body of acute care hospitals to give great weight to the actions of peer review bodies and authorizes the governing body to direct the peer review body to investigate in

specified instances. Where the peer review body fails to take action in response to that direction, existing law authorizes the governing body to take action against a licentiate.

This bill would prohibit a member of a medical or professional staff from being required to alter or surrender staff privileges, status, or membership solely due to the termination of a contract between that member and a health care facility. The bill would specify that a peer review body is entitled to review and make recommendations to the governing body of a health care facility regarding the quality implications of the selection, performance evaluation, and any change in the retention or replacement of licensees with whom the facility has a contract and would prohibit the governing body from unreasonably withholding approval of those recommendations, as specified.

Existing law provides various due process rights for licentiates who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licensee to request a hearing concerning that action. Under existing law, the hearing must be held before either an arbitrator mutually acceptable to the licensee and the peer review body or a panel of unbiased individuals, as specified. Existing law prohibits a hearing officer presiding at a hearing held before a panel from, among other things, gaining direct financial benefit from the outcome.

This bill would give the licensee the choice of having the hearing before a mutually acceptable arbitrator or a panel of unbiased individuals. The bill would require the hearing officer presiding at a hearing before a panel to meet certain requirements and to disclose all actual and potential conflicts. The bill would specify that the hearing officer is entitled to determine the procedure for presenting evidence and argument and would give the hearing officer authority to make all rulings pertaining to law, procedure, or the admissibility of evidence.

Existing law gives parties at the hearing certain rights, including the right to present and rebut evidence. Existing law requires the peer review body to adopt written provisions governing whether a licensee may be represented by an attorney.

This bill would give both parties the right to be represented by an attorney, except as specified.

~~Existing law provides that every person has the right to choose or refuse birth control and that every woman has the right to choose to bear a child or to obtain an abortion. Existing law provides for the licensure and regulation of physicians and surgeons by the Medical~~

~~Board of California, nurse practitioners by the Board of Registered Nursing, and physician assistants by the Physician Assistant Committee of the Medical Board of California. Existing law specifies conduct deemed unprofessional by physicians and surgeons, nurse practitioners, and physician assistants and provides for investigation and discipline of that conduct by the respective licensing boards.~~

~~This bill would make legislative findings and declarations regarding a patient's right to health care services and information. This bill would provide that a patient is entitled to receive, and a physician and surgeon, nurse practitioner, and physician assistant are obligated to disclose, all information, including all available medical choices, reasonably necessary for the patient to give informed consent with respect to personal reproductive decisions. This bill would provide that failure to fulfill this duty constitutes unprofessional conduct, unless the licensee objects based on ethical, moral, or religious grounds, as specified.~~

~~Because this bill would specify additional requirements under the Medical Practice Act, and the Nursing Practice Act, the violation of which would be a crime, this bill would create a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~.
State-mandated local program: ~~yes-no~~.

The people of the State of California do enact as follows:

1 SECTION 1. Section 809 of the Business and Professions Code
2 is amended to read:
3 809. (a) The Legislature hereby finds and declares the
4 following:
5 (1) In 1986, Congress enacted the Health Care Quality
6 Improvement Act of 1986 (Chapter 117 (commencing with Section
7 11101) Title 42, United States Code), to encourage physicians to
8 engage in effective professional peer review, but giving each state
9 the opportunity to “opt-out” of some of the provisions of the federal
10 act.

1 (2) Because of deficiencies in the federal act and the possible
2 adverse interpretations by the courts of the federal act, it is
3 preferable for California to “opt-out” of the federal act and design
4 its own peer review system.

5 (3) Peer review, fairly conducted, is essential to preserving the
6 highest standards of medical practice.

7 (4) *It is essential that California’s peer review system generate*
8 *a culture of trust and safety so that health care practitioners will*
9 *participate robustly in the process by engaging in critically*
10 *important patient safety activities, such as reporting incidents they*
11 *believe to reflect substandard care or unprofessional conduct and*
12 *serving on peer review, quality assurance, and other committees*
13 *necessary to protect patients.*

14 (5) *It is the policy of the state that evaluation, corrective action,*
15 *or other forms of peer review only be conducted for patient safety*
16 *and the improvement of quality patient care.*

17 ~~(4)~~

18 (6) Peer review that is not conducted fairly results in harm both
19 to patients and healing arts practitioners by *wrongfully depriving*
20 *patients of their ability to obtain care from their chosen*
21 *practitioner and by depriving practitioners of their ability to care*
22 *for their patients, thereby limiting much needed access to care.*

23 ~~(5)~~

24 (7) Peer review, fairly conducted, will aid the appropriate state
25 licensing boards in their responsibility to regulate and discipline
26 errant healing arts practitioners.

27 ~~(6)~~

28 (8) To protect the health and welfare of the people of California,
29 it is the policy of the State of California to exclude, through the
30 peer review mechanism as provided for by California law, those
31 healing arts practitioners who provide substandard care or who
32 engage in professional misconduct, regardless of the effect of that
33 exclusion on competition.

34 ~~(7)~~

35 (9) It is the intent of the Legislature that peer review of
36 professional health care services be done efficiently, on an ongoing
37 basis, and with an emphasis on early detection of potential quality
38 problems and resolutions through informal educational
39 interventions. *It is further the intent of the Legislature that peer*
40 *review bodies be actively involved in the measurement, assessment,*

1 *and improvement of quality and that there be appropriate oversight*
2 *by the peer review bodies to ensure the timely resolution of issues.*

3 ~~(8)~~

4 (10) Sections 809 to 809.8, inclusive, shall not affect the
5 respective responsibilities of the organized medical staff or the
6 governing body of an acute care hospital with respect to peer
7 review in the acute care hospital setting. It is the intent of the
8 Legislature that written provisions implementing Sections 809 to
9 809.8, inclusive, in the acute care hospital setting shall be included
10 in medical staff bylaws that shall be adopted by a vote of the
11 members of the organized medical staff and shall be subject to
12 governing body approval, which approval shall not be withheld
13 unreasonably.

14 ~~(9)~~

15 (11) (A) The Legislature thus finds and declares that the laws
16 of this state pertaining to the peer review of healing arts
17 practitioners shall apply in lieu of Chapter 117 (commencing with
18 Section 11101) of Title 42 of the United States Code, because the
19 laws of this state provide a more careful articulation of the
20 protections for both those undertaking peer review activity and
21 those subject to review, and better integrate public and private
22 systems of peer review. Therefore, California exercises its right
23 to opt out of specified provisions of the Health Care Quality
24 Improvement Act relating to professional review actions, pursuant
25 to Section 11111(c)(2)(B) of Title 42 of the United States Code.
26 This election shall not affect the availability of any immunity under
27 California law.

28 (B) The Legislature further declares that it is not the intent or
29 purposes of Sections 809 to 809.8, inclusive, to opt out of any
30 mandatory national data bank established pursuant to Subchapter
31 II (commencing with Section 11131) of Chapter 117 of Title 42
32 of the United States Code.

33 (b) For the purpose of this section and Sections 809.1 to 809.8,
34 inclusive, “healing arts practitioner” or “licentiate” means a
35 physician and surgeon, podiatrist, clinical psychologist, marriage
36 and family therapist, clinical social worker, or dentist; and “peer
37 review body” means a peer review body as specified in paragraph
38 (1) of subdivision (a) of Section 805, and includes any designee
39 of the peer review body.

1 *SEC. 2. Section 809.04 is added to the Business and Professions*
2 *Code, to read:*

3 809.04. (a) *It is the public policy of the state that licentiates*
4 *who may be providing substandard care be subject to the peer*
5 *review hearing and reporting process set forth in this article.*

6 (b) *To ensure that the peer review process is not circumvented,*
7 *a member of a medical or professional staff, by contract or*
8 *otherwise, shall not be required to alter or surrender staff*
9 *privileges, status, or membership solely due to the termination of*
10 *a contract between that member and a health care facility.*

11 (c) *The peer review body of a health care facility shall be*
12 *entitled to review and make recommendations to the governing*
13 *body of the facility regarding the quality implications of the*
14 *selection, performance evaluation, and any change in the retention*
15 *or replacement of licentiates with whom the health care facility*
16 *has a contract. The governing body shall not unreasonably*
17 *withhold approval of those recommendations.*

18 (d) *This section shall not impair a governing body's ability to*
19 *take action against a licensee pursuant to Section 809.05.*

20 *SEC. 3. Section 809.07 is added to the Business and Professions*
21 *Code, to read:*

22 809.07. (a) *It is the policy of the state that in certain*
23 *circumstances, external peer review may be necessary to promote*
24 *and protect patient care in order to eliminate perceived bias, obtain*
25 *needed medical expertise, or respond to other particular*
26 *circumstances.*

27 (b) *A peer review body is encouraged to obtain external peer*
28 *review for the evaluation or investigation of an applicant, privilege*
29 *holder, or member of the medical staff in the following*
30 *circumstances:*

31 (1) *Committee or department reviews that could affect an*
32 *individual's membership or privileges do not provide a sufficiently*
33 *clear basis for action or inaction.*

34 (2) *No current medical staff member can provide the necessary*
35 *expertise in the clinical procedure or area under review.*

36 (3) *To promote impartial peer review.*

37 (4) *Upon the reasonable request of the licensee.*

38 (c) *Under no circumstances may any organization external to*
39 *the peer review body that provides quality improvement activities*

1 *perform any activities at the health care facility without the*
2 *concurrence of and input from the peer review body.*

3 *(d) For purposes of this section, the following definitions apply:*

4 *(1) "Peer review body" has the meaning provided in paragraph*
5 *(1) of subdivision (a) of Section 805.*

6 *(2) "External peer review" means peer review provided by an*
7 *external objective organization engaged in quality improvement*
8 *activities that has the ability to perform review by licentiates who*
9 *are not members of the peer review body.*

10 *SEC. 4. Section 809.08 is added to the Business and Professions*
11 *Code, to read:*

12 *809.08. (a) The Legislature hereby finds and declares that the*
13 *sharing of information between peer review bodies is essential to*
14 *protect the public health.*

15 *(b) A peer review body shall respond to the request of another*
16 *peer review body and produce the records requested concerning*
17 *a licentiate under review to the extent not otherwise prohibited by*
18 *state or federal law. The records produced pursuant to this section*
19 *shall not be subject to discovery, a subpoena, or a subpoena duces*
20 *tecum, and shall not be admissible as evidence in a civil action.*
21 *The peer review body responding to the request shall be entitled*
22 *to all other confidentiality protections and privileges otherwise*
23 *provided by law as to the information and records disclosed*
24 *pursuant to this section.*

25 *SEC. 5. Section 809.2 of the Business and Professions Code*
26 *is amended to read:*

27 *809.2. If a licentiate timely requests a hearing concerning a*
28 *final proposed action for which a report is required to be filed*
29 *under Section 805, the following shall apply:*

30 *(a) The hearing shall be held, as determined by the peer review*
31 *body, before a trier of fact, which shall be an and the licentiate*
32 *shall have the choice of hearing by either of the following:*

33 *(1) An arbitrator or arbitrators selected by a process mutually*
34 *acceptable to the licentiate and the peer review body, or before a*
35 *body.*

36 *(2) A panel of unbiased individuals who shall gain no direct*
37 *financial benefit from the outcome, who have not acted as an*
38 *accuser, investigator, factfinder, or initial decisionmaker in the*
39 *same matter, and which shall include, where feasible, an individual*
40 *practicing the same specialty as the licentiate.*

(b) (1) If a hearing officer is selected to preside at a hearing held before a panel, the hearing officer shall gain no direct financial benefit from the outcome, *shall disclose all actual and potential conflicts of interest*, shall not act as a prosecuting officer or advocate, and shall not be entitled to vote. *The hearing officer shall also meet both of the following requirements:*

(A) *Be mutually acceptable to the licentiate and the peer review body. If the licentiate and peer review body are unable to agree, they shall utilize the services of the American Arbitration Association or other mutually agreed upon dispute resolution organization.*

(B) *Be an attorney licensed to practice law in the State of California and qualified to preside over a quasi-judicial hearing. Attorneys from a firm utilized by the hospital, the medical staff, or the involved licentiate within the preceding two years shall not be eligible.*

(2) *The hearing officer shall endeavor to ensure that all parties maintain proper decorum and have a reasonable opportunity to be heard and present all relevant oral and documentary evidence. The hearing officer shall be entitled to determine the order of, or procedure for, presenting evidence and argument during the hearing and shall have the authority and discretion to make all rulings on questions pertaining to matters of law, procedure, or the admissibility of evidence. The hearing officer shall also take all appropriate steps to ensure a timely resolution of the hearing, but may not terminate the hearing process.*

(c) The licentiate shall have the right to a reasonable opportunity to voir dire the panel members and any hearing officer, and the right to challenge the impartiality of any member or hearing officer. Challenges to the impartiality of any member or hearing officer shall be ruled on by the presiding officer, who shall be the hearing officer if one has been selected.

(d) The licentiate shall have the right to inspect and copy at the licentiate's expense any documentary information relevant to the charges which the peer review body has in its possession or under its control, as soon as practicable after the receipt of the licentiate's request for a hearing. The peer review body shall have the right to inspect and copy at the peer review body's expense any documentary information relevant to the charges which the licentiate has in his or her possession or control as soon as

1 practicable after receipt of the peer review body's request. The
2 failure by either party to provide access to this information at least
3 30 days before the hearing shall constitute good cause for a
4 continuance. The right to inspect and copy by either party does
5 not extend to confidential information referring solely to
6 individually identifiable licentiates, other than the licentiate under
7 review. The arbitrator or presiding officer shall consider and rule
8 upon any request for access to information, and may impose any
9 safeguards the protection of the peer review process and justice
10 requires.

11 (e) When ruling upon requests for access to information and
12 determining the relevancy thereof, the arbitrator or presiding officer
13 shall, among other factors, consider the following:

14 (1) Whether the information sought may be introduced to
15 support or defend the charges.

16 (2) The exculpatory or inculpatory nature of the information
17 sought, if any.

18 (3) The burden imposed on the party in possession of the
19 information sought, if access is granted.

20 (4) Any previous requests for access to information submitted
21 or resisted by the parties to the same proceeding.

22 (f) At the request of either side, the parties shall exchange lists
23 of witnesses expected to testify and copies of all documents
24 expected to be introduced at the hearing. Failure to disclose the
25 identity of a witness or produce copies of all documents expected
26 to be produced at least 10 days before the commencement of the
27 hearing shall constitute good cause for a continuance.

28 (g) Continuances shall be granted upon agreement of the parties
29 or by the arbitrator or presiding officer on a showing of good cause.

30 (h) A hearing under this section shall be commenced within 60
31 days after receipt of the request for hearing, and the peer review
32 process shall be completed within a reasonable time, after a
33 licentiate receives notice of a final proposed action or an immediate
34 suspension or restriction of clinical privileges, unless the arbitrator
35 or presiding officer issues a written decision finding that the
36 licentiate failed to comply with subdivisions (d) and (e) in a timely
37 manner, or consented to the delay.

38 *SEC. 6. Section 809.3 of the Business and Professions Code*
39 *is amended to read:*

1 809.3. (a) During a hearing concerning a final proposed action
2 for which reporting is required to be filed under Section 805, both
3 parties shall have all of the following rights:

4 (1) To be provided with all of the information made available
5 to the trier of fact.

6 (2) To have a record made of the proceedings, copies of which
7 may be obtained by the licentiate upon payment of any reasonable
8 charges associated with the preparation thereof.

9 (3) To call, examine, and cross-examine witnesses.

10 (4) To present and rebut evidence determined by the arbitrator
11 or presiding officer to be relevant.

12 (5) To submit a written statement at the close of the hearing.

13 (6) *To be represented by an attorney of the party's choice at*
14 *the party's expense, subject to subdivision (c).*

15 (b) The burden of presenting evidence and proof during the
16 hearing shall be as follows:

17 (1) The peer review body shall have the initial duty to present
18 evidence which supports the charge or recommended action.

19 (2) Initial applicants shall bear the burden of persuading the
20 trier of fact by a preponderance of the evidence of their
21 qualifications by producing information which allows for adequate
22 evaluation and resolution of reasonable doubts concerning their
23 current qualifications for staff privileges, membership, or
24 employment. Initial applicants shall not be permitted to introduce
25 information not produced upon request of the peer review body
26 during the application process, unless the initial applicant
27 establishes that the information could not have been produced
28 previously in the exercise of reasonable diligence.

29 (3) Except as provided above for initial applicants, the peer
30 review body shall bear the burden of persuading the trier of fact
31 by a preponderance of the evidence that the action or
32 recommendation is reasonable and warranted.

33 ~~(c) The peer review body shall adopt written provisions~~
34 ~~governing whether a licentiate shall have the option of being~~
35 ~~represented by an attorney at the licentiate's expense. No peer~~
36 ~~review body shall be represented by an attorney if the licentiate is~~
37 ~~not so represented, except dental professional society peer review~~
38 ~~bodies may be represented by an attorney provided that the peer~~
39 ~~review body grants each licentiate the option of being represented~~

1 by an attorney at the licentiate's expense, even if the licentiate
2 declines to be represented by an attorney.

3 ~~SECTION 1. Section 686 is added to the Business and~~
4 ~~Professions Code, to read:~~

5 ~~686. The Legislature hereby finds and declares that a~~
6 ~~professional or vocational license represents a privilege to practice~~
7 ~~in California. While the state respects the right of an individual~~
8 ~~licensee to refuse to perform health care services to which he or~~
9 ~~she objects on ethical, moral, or religious grounds, there are limits~~
10 ~~on these rights when they conflict with the superior right of patients~~
11 ~~to access health care services. Accordingly, the Legislature finds~~
12 ~~and declares that persons licensed under this division should not~~
13 ~~abandon a patient or otherwise withhold health care service or~~
14 ~~information from a patient without providing reasonable~~
15 ~~accommodation of the patient's right to access health care services~~
16 ~~and information. For purposes of this section, "reasonable~~
17 ~~accommodation" shall have the same meaning as applied to that~~
18 ~~term pursuant to subdivision (l) of Section 12940 of the~~
19 ~~Government Code.~~

20 ~~SEC. 2. Section 2234 of the Business and Professions Code is~~
21 ~~amended to read:~~

22 ~~2234. The Division of Medical Quality shall take action against~~
23 ~~any licensee who is charged with unprofessional conduct. In~~
24 ~~addition to other provisions of this article, unprofessional conduct~~
25 ~~includes, but is not limited to, the following:~~

26 ~~(a) Violating or attempting to violate, directly or indirectly,~~
27 ~~assisting in or abetting the violation of, or conspiring to violate~~
28 ~~any provision of this chapter.~~

29 ~~(b) Gross negligence.~~

30 ~~(c) Repeated negligent acts. To be repeated, there must be two~~
31 ~~or more negligent acts or omissions. An initial negligent act or~~
32 ~~omission followed by a separate and distinct departure from the~~
33 ~~applicable standard of care shall constitute repeated negligent acts.~~

34 ~~(1) An initial negligent diagnosis followed by an act or omission~~
35 ~~medically appropriate for that negligent diagnosis of the patient~~
36 ~~shall constitute a single negligent act.~~

37 ~~(2) When the standard of care requires a change in the diagnosis,~~
38 ~~act, or omission that constitutes the negligent act described in~~
39 ~~paragraph (1), including, but not limited to, a reevaluation of the~~
40 ~~diagnosis or a change in treatment, and the licensee's conduct~~

1 ~~departs from the applicable standard of care, each departure~~
2 ~~constitutes a separate and distinct breach of the standard of care.~~

3 ~~(d) Incompetence.~~

4 ~~(e) The commission of any act involving dishonesty or~~
5 ~~corruption which is substantially related to the qualifications,~~
6 ~~functions, or duties of a physician and surgeon.~~

7 ~~(f) Any action or conduct which would have warranted the~~
8 ~~denial of a certificate.~~

9 ~~(g) The practice of medicine from this state into another state~~
10 ~~or country without meeting the legal requirements of that state or~~
11 ~~country for the practice of medicine. Section 2314 shall not apply~~
12 ~~to this subdivision. This subdivision shall become operative upon~~
13 ~~the implementation of the proposed registration program described~~
14 ~~in Section 2052.5.~~

15 ~~(h) Failure to fulfill the duty of reasonable disclosure to a patient~~
16 ~~pursuant to subdivision (c) of Section 123462 of the Health and~~
17 ~~Safety Code.~~

18 ~~SEC. 3. Section 2761 of the Business and Professions Code is~~
19 ~~amended to read:~~

20 ~~2761. The board may take disciplinary action against a certified~~
21 ~~or licensed nurse or deny an application for a certificate or license~~
22 ~~for any of the following:~~

23 ~~(a) Unprofessional conduct, which includes, but is not limited~~
24 ~~to, the following:~~

25 ~~(1) Incompetence, or gross negligence in carrying out usual~~
26 ~~certified or licensed nursing functions.~~

27 ~~(2) A conviction of practicing medicine without a license in~~
28 ~~violation of Chapter 5 (commencing with Section 2000), in which~~
29 ~~event the record of conviction shall be conclusive evidence thereof.~~

30 ~~(3) The use of advertising relating to nursing which violates~~
31 ~~Section 17500.~~

32 ~~(4) Denial of licensure, revocation, suspension, restriction, or~~
33 ~~any other disciplinary action against a health care professional~~
34 ~~license or certificate by another state or territory of the United~~
35 ~~States, by any other government agency, or by another California~~
36 ~~health care professional licensing board. A certified copy of the~~
37 ~~decision or judgment shall be conclusive evidence of that action.~~

38 ~~(5) Failure of a nurse practitioner to fulfill the duty of reasonable~~
39 ~~disclosure to a patient pursuant to subdivision (c) of Section 123462~~
40 ~~of the Health and Safety Code.~~

1 ~~(b) Procuring his or her certificate or license by fraud,~~
2 ~~misrepresentation, or mistake.~~

3 ~~(c) Procuring, or aiding, or abetting, or attempting, or agreeing,~~
4 ~~or offering to procure or assist at a criminal abortion.~~

5 ~~(d) Violating or attempting to violate, directly or indirectly, or~~
6 ~~assisting in or abetting the violating of, or conspiring to violate~~
7 ~~any provision or term of this chapter or regulations adopted~~
8 ~~pursuant to it.~~

9 ~~(e) Making or giving any false statement or information in~~
10 ~~connection with the application for issuance of a certificate or~~
11 ~~license.~~

12 ~~(f) Conviction of a felony or of any offense substantially related~~
13 ~~to the qualifications, functions, and duties of a registered nurse;~~
14 ~~in which event the record of the conviction shall be conclusive~~
15 ~~evidence thereof.~~

16 ~~(g) Impersonating any applicant or acting as proxy for an~~
17 ~~applicant in any examination required under this chapter for the~~
18 ~~issuance of a certificate or license.~~

19 ~~(h) Impersonating another certified or licensed practitioner, or~~
20 ~~permitting or allowing another person to use his or her certificate~~
21 ~~or license for the purpose of nursing the sick or afflicted.~~

22 ~~(i) Aiding or assisting, or agreeing to aid or assist any person~~
23 ~~or persons, whether a licensed physician or not, in the performance~~
24 ~~of, or arranging for, a violation of any of the provisions of Article~~
25 ~~12 (commencing with Section 2220) of Chapter 5.~~

26 ~~(j) Holding oneself out to the public or to any practitioner of~~
27 ~~the healing arts as a “nurse practitioner” or as meeting the standards~~
28 ~~established by the board for a nurse practitioner unless meeting~~
29 ~~the standards established by the board pursuant to Article 8~~
30 ~~(commencing with Section 2834) or holding oneself out to the~~
31 ~~public as being certified by the board as a nurse anesthetist, nurse~~
32 ~~midwife, clinical nurse specialist, or public health nurse unless the~~
33 ~~person is at the time so certified by the board.~~

34 ~~(k) Except for good cause, the knowing failure to protect patients~~
35 ~~by failing to follow infection control guidelines of the board,~~
36 ~~thereby risking transmission of blood-borne infectious diseases~~
37 ~~from licensed or certified nurse to patient, from patient to patient,~~
38 ~~and from patient to licensed or certified nurse. In administering~~
39 ~~this subdivision, the board shall consider referencing the standards,~~
40 ~~regulations, and guidelines of the State Department of Public~~

~~Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the Board of Podiatric Medicine, the Dental Board of California, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.~~

~~The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates to minimize the risk of transmission of blood-borne infectious diseases from health care provider to patient, from patient to patient, and from patient to health care provider, and of the most recent scientifically recognized safeguards for minimizing the risks of transmission.~~

~~SEC. 4. Section 3541 of the Business and Professions Code is amended to read:~~

~~3541. The following shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter:~~

~~(a) Violating, attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws.~~

~~(b) Failing to fulfill the duty of reasonable disclosure to a patient pursuant to subdivision (c) of Section 123462 of the Health and Safety Code.~~

~~SEC. 5. Section 123462 of the Health and Safety Code is amended to read:~~

~~123462. The Legislature finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions. Accordingly, it is the public policy of the State of California that:~~

~~(a) Every individual has the fundamental right to choose or refuse birth control.~~

1 ~~(b) Every woman has the fundamental right to choose to bear~~
2 ~~a child or to choose and to obtain an abortion, except as specifically~~
3 ~~limited by this article.~~

4 ~~(c) The state shall not deny or interfere with a woman's~~
5 ~~fundamental right to choose to bear a child or to choose to obtain~~
6 ~~an abortion, except as specifically permitted by this article.~~

7 ~~(d) Each person who seeks health care treatment, consultation,~~
8 ~~or information pertaining to the person's personal reproductive~~
9 ~~decisions from a physician and surgeon licensed pursuant to~~
10 ~~Chapter 5 (commencing with Section 2000) of Division 2 of the~~
11 ~~Business and Professions Code, a nurse practitioner licensed~~
12 ~~pursuant to Article 8 (commencing with Section 2834) of Chapter~~
13 ~~6 of Division 2 of the Business and Professions Code, or a~~
14 ~~physician assistant licensed pursuant to Chapter 7.7 (commencing~~
15 ~~with Section 3500) of Division 2 of the Business and Professions~~
16 ~~Code shall be entitled to receive all information reasonably~~
17 ~~necessary for the patient to give informed consent in determining~~
18 ~~whether to submit to medical treatment, including disclosure of~~
19 ~~all available medical choices.~~

20 ~~(e) Each physician and surgeon, nurse practitioner, and physician~~
21 ~~assistant described in subdivision (d) has an affirmative duty of~~
22 ~~reasonable disclosure to his or her patient of all available medical~~
23 ~~choices with respect to the patient's personal reproductive~~
24 ~~decisions. Failure of a physician and surgeon, nurse practitioner,~~
25 ~~or physician assistant to fulfill this duty shall constitute~~
26 ~~unprofessional conduct, unless all of the following circumstances~~
27 ~~exists:~~

28 ~~(1) The licensee refuses on ethical, moral, or religious grounds~~
29 ~~to provide disclosure pertaining to an available medical choice.~~

30 ~~(2) The licensee has previously notified his or her employer, in~~
31 ~~writing, of the medical choice or choices of which he or she objects~~
32 ~~to disclosing, and the licensee's employer can, without creating~~
33 ~~undue hardship, provide a reasonable accommodation of the~~
34 ~~licensee's objection. For purposes of this section, "reasonable~~
35 ~~accommodation" and "undue hardship" shall have the same~~
36 ~~meaning as applied to those terms, respectively, pursuant to~~
37 ~~subdivision (f) of Section 12940 of the Government Code.~~

38 ~~(3) The licensee's employer shall have established protocols~~
39 ~~that ensure that the patient has timely access to reasonable~~

1 disclosure of all medical choices pursuant to subdivision (d) despite
2 the licensee's refusal to disclose the specified medical choice.
3 SEC. 6. ~~No reimbursement is required by this act pursuant to~~
4 ~~Section 6 of Article XIII B of the California Constitution because~~
5 ~~the only costs that may be incurred by a local agency or school~~
6 ~~district will be incurred because this act creates a new crime or~~
7 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
8 ~~for a crime or infraction, within the meaning of Section 17556 of~~
9 ~~the Government Code, or changes the definition of a crime within~~
10 ~~the meaning of Section 6 of Article XIII B of the California~~
11 ~~Constitution.~~